

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DENNIS D. FECHNER and
NANCY J. FECHNER, husband and wife,

No. CV-06-199-AAM

ORDER OF DISMISSAL

Plaintiffs,

vs.

OPTION ONE MORTGAGE
CORPORATION, a California
corporation; CREEKSIDE LENDING,
INC., a Washington corporation, and
PREMIER MORTGAGE SERVICES,
INC., a Washington corporation,

Defendant.

BEFORE THE COURT is a “Joint Motion For Approval Of Settlement Agreement And Dismissal Of Claims” (Ct. Rec. 19) brought by Plaintiffs and Defendants Option One Mortgage Corporation (Option One) and Premier Mortgage Services, Inc. (Premier). Plaintiffs and Option One and Premier are the parties to the Settlement Agreement. Defendant Creekside Lending, Inc. (Creekside) is not a party to the Settlement Agreement.

No authority obligates the court to approve a non-class action settlement such as involved here. Therefore, the court will neither approve or disapprove of the settlement agreement. The “Joint Motion For Approval Of Settlement Agreement And Dismissal Of Claims” (Ct. Rec. 19) is **DENIED** to the extent it seeks judicial approval of the settlement agreement. It is **GRANTED**, however, to

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1 the extent the settlement results in dismissal of the claims against Option One and
2 Premier. Pursuant to the settlement agreement, all claims against Option One and
3 Premier asserted in the Complaint of record (Ct. Rec. 1) are **DISMISSED with**
4 **prejudice**, the parties to bear their own costs.

5 There are no federal claims asserted against Creekside in either the
6 Complaint of record or in the Plaintiff's proposed First Amended Complaint. The
7 only basis for subject matter jurisdiction over the state law claims against
8 Creekside is supplemental jurisdiction pursuant to 28 U.S.C. §1367(a). Plaintiffs
9 acknowledge that with the dismissal of all of the claims against Option One and
10 Premier, including the federal claims against Option One, only state law claims
11 against Creekside remain. If this court has supplemental jurisdiction over those
12 state law claims, it would exercise its discretion to dismiss them without prejudice
13 because there are no remaining claims over which the court has original
14 jurisdiction. 28 U.S.C. §1367(c)(3). If the court does not have supplemental
15 jurisdiction over those state law claims, it is not a matter of discretion: the state
16 law claims must be dismissed without prejudice. Therefore, regardless of whether
17 this court has supplemental jurisdiction, the result is the same: Plaintiff's state law
18 claims against Defendant Creekside in the Complaint of record (Ct. Rec. 1) are
19 **DISMISSED without prejudice** to their reassertion in state court. This dismissal
20 renders moot the Plaintiff's Motion For Leave To Amend Complaint (Ct. Rec. 10)
21 and therefore, that motion is **DISMISSED**.¹

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25 ¹ The only federal claims asserted in the proposed First Amended Complaint
26 are also against Option One. Therefore, with the dismissal of Option One, all that
27 remains in the proposed First Amended Complaint are state law claims against
28 Defendant Creekside and the proposed new defendants. (Tim M. Brigman and
Accredited Surety And Casualty Company, Inc.).

s/ Alan A. McDonald
ALAN A. McDONALD
Senior United States District Judge